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IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

JOSEPH HARDEN,  
Petitioner,  
v.  
MICHAEL BOWERSOX,  
Respondent.

No. 4:14-CV-383 NAB

PETITIONER'S REPLY TO  
RESPONSE TO ORDER TO SHOW CAUSE WHY  
A WRIT OF HABEAS CORPUS SHOULD NOT BE GRANTED

COMES NOW Petitioner (Harden), and in support of this reply,  
states:

Reply To Merits Analysis

Harden has no desire for this court to "second guess" the reasonable decisions of the State courts. But he does want this court to recognize the decisions of the State courts, in this case, were unreasonable.

The facts and arguments for why the State court's decisions were unreasonable, in applying Federal Law, and determining

facts, need not be presented here, as they are in Harden's Memorandum supporting his petition.

What does need to be presented are the reasons Harden should be granted relief.

### Ground One

All required to determine if the State court's decisions, in Ground One, are reasonable is to:

a. Point to the evidence that Harden forcibly stole property; and

b. Using reasonable inferences,<sup>1</sup> demonstrate how that evidence proves Harden "forcibly stole property", beyond a reasonable doubt; then

c. Point to the evidence that Harden "in the course of" "forcibly stealing property" caused physical injury; and

d. Using reasonable inferences demonstrate how that evidence proves Harden "in the course of forcibly stealing property caused physical injury.

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<sup>1</sup> Reasonable inferences from basic facts to ultimate facts, as set forth in Jackson v. Virginia, 443 U.S. 307, 319 (1979), not a "mere modicum" of evidence that makes the existence of an element slightly more probable (the "no evidence" standard rejected in Jackson, Id., at 320)

It is critical to point out that the element needing evidence is not "forcibly stole property" and "caused physical injury". The element needing evidence is that the physical injury was caused "in the course of" forcibly stealing property.

This may be a fine line, but it is the line drawn by the law, and therefore needs to be respected.

If this court cannot use this process to point to the evidence, reasonably inferring Harden's guilt of Robbery in the first degree, beyond a reasonable doubt, relief for Harden is appropriate.

#### Ground Two

The State's argument why Harden should be denied relief on Ground Two amounts to saying Harden had a brief moment to "cooly reflect"<sup>2</sup> and therefore, this is evidence that he actually coolly reflected.

This is a fallacy in reasoning because evidence that Harden had time to coolly reflect is not evidence that he did. Any court that says so is making an unreasonable decision under 28 U.S.C. §2254(d)(1) and (2).

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The definition of the element of "Deliberation", required to find guilt on Murder in the first degree §565.020.1 RSMo., is "cool reflection for any length of time no matter how brief" §565.002(3) RSMo.

Again, using the process from Jackson v. Virginia, Id., if this court cannot point to the evidence, reasonably inferring Harden's guilt, beyond a reasonable doubt for Murder in the First degree, relief is appropriate for Harden.

Harden is confident this court will find no evidence that he coolly reflected.

### Ground Three

The facts and arguments in the Memorandum supporting Ground Three are enough to convince this court that relief on this ground is required. The reason a prosecutor cannot use the death penalty in the same way any other penalty is used is because DEATH IS DIFFERENT. Where life, or even life without parole can be used by a prosecutor as a bargaining chip, the line has been drawn barring death as a bargaining chip. For who, in any court, can say that it is reasonable to determine a decision made by a defendant under the threat of death is made under the meaning of "Due Process"?

It is Harden's belief that, because the Supreme Court of the United States has determined that death is different, use of death as a bargaining chip is unconstitutional under the Due Process Clause of the 14th Amendment U.S. CONST.

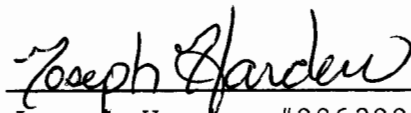
Ground Four

Again, the facts and arguments in Harden's Memorandum require no repetition in support of ground four. What can be said is, if a witness cannot or does not remember, then that witness should not be allowed to testify about the matter he cannot or does not remember. Donald Booth's relevant testimony has been mislabeled as "inconsistent". The facts are what they are and this court will have to make it's own decision.

Conclusion

This court has a hard job to do, and one which will result in Harden being granted the relief prayed for.

Respectfully Submitted,

A handwritten signature in cursive script, reading "Joseph Harden", is written over a horizontal line.

Joseph Harden #286322  
SCCC, 255 W. Hwy. 32  
Licking, MO 65542-9069

CERTIFICATE OF SERVICE AND INSTITUTIONAL MAILING

I hereby certify that a copy of the foregoing was served via U.S. Mail, with First-Class postage prepaid to: Katharine A. Dolin, P.O. Box 899, Jefferson City, MO 65102, by being deposited in the Institutional Mailbox at: South Central Correctional Center, 255 W. Hwy. 32, Licking, MO 65542-9069.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 4/30/2014 Signed: Joseph Harden  
Joseph Harden #286322  
SCCC, 255 W. Hwy. 32  
Licking, MO 65542-9069